



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16228422

Date: AUG. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that her proposed endeavor in the United States is to be a language teacher working with "children for whom English is a second language." In response to the Director's request for evidence (RFE), the Petitioner submitted a personal statement indicating her undertaking involves working with children that recently arrived in the United States but do not speak English and that her "main objective is to mitigate this barrier, the initial conflict produced by the sudden move, and the necessity to immediately acquire and comprehend a second language."

In her appellate brief, the Petitioner asserts that her endeavor is "to work in the United States as a Language School Teacher, specifically seeking to provide English as a Second Language (ESL) services along with teaching Portuguese in schools." She further explains that her "endeavor is to ultimately aid in the education of students." The Petitioner provided evidence that she had a respected career as a teacher in Brazil and received recognition from her peers regarding various programs she implemented over the course of her career.

The record includes articles about the importance of ESL teachers and the growing importance of Portuguese as a global language. In addition, the Petitioner provided reports discussing English Language Learner (ELL) students and how they are being taught, the social and economic benefits of public education, ELL performance by state, academic performance and outcomes for ELLs, progress and challenges in raising high school graduation rates, and teacher shortage areas in the United States. She also offered information about the Bilingual Education Act, the Every Student Succeeds Act (ESSA), economic returns from good teachers, the demand for bilingual workers, and the educational and employment barriers and opportunities for ELLs. The record therefore supports the Director's determination that the Petitioner's proposed work as a school teacher instructing ELL students has substantial merit.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

foreign national proposes to undertake.”⁴ See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In her appellate brief, the Petitioner points to her background, education, teaching experience, instructional methodology, and specialized training in her field. Her appellate submission includes articles describing major bilingual ESL teacher shortages in Florida as well as throughout the United States. The Petitioner’s knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.⁵ The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

The Petitioner asserts that the Director’s decision disregarded a letter from [REDACTED] [REDACTED] the municipal secretary of education in [REDACTED] Brazil. [REDACTED] discussed following plans developed by the Petitioner as well as seeing the Petitioner’s projects that are “geared towards the knowledge and practice of English as a second language.” The Petitioner claims that [REDACTED] letter “demonstrates that she has a record of notable success, as she has had a leading role in defining projects within education in Brazil and has been awarded for her contributions.” The information from [REDACTED] however, relates to the Petitioner’s past work as a professor and teacher in Brazil and does not explain how her proposed work as a public school teacher in the United States involves undertaking research and disseminating her findings to others in the field.

The Petitioner further argues that her proposed work as a public school teacher “would broadly enhance societal welfare and cultural enrichment,” but she does not offer specific examples of such impact. She also contends that her undertaking has national implications for the United States, particularly in the field of education, where there already is such a shortage in interest. In addition, the Petitioner asserts that her proposed endeavor in aiding students in the public school system is incredibly nationally important, as seen through the severe shortage of teachers in our country.

To evaluate whether the Petitioner’s endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. In the present matter, the Petitioner’s evidence is insufficient to show that her proposed work has broader implications for her field, as opposed to being limited to the students at the school where she intends to teach. While the

⁴ The issue here is not the value of the U.S. education system or the impact of schooling on our country’s economy, but rather whether the Petitioner’s specific proposed endeavor as a teacher in a public school system rises to the level of national importance.

⁵ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

Petitioner offered articles indicating that both the United States and Florida face a shortage of ELL teachers, this reported shortage does not render the work of an individual teacher nationally important under the *Dhanasar* framework.⁶ In general, the value of qualified English teachers to U.S. national educational initiatives is collective, and the Petitioner has not shown that her proposed work as a public school teacher stands to have wider implications in the fields of ESL or education.

The Petitioner's documentation is not sufficient to demonstrate that her proposed endeavor is of national importance under the *Dhanasar* framework. While we acknowledge the merits of her work to create a positive learning environment and improve her students' language proficiency and their preparation for future careers, the record does not demonstrate that the Petitioner's proposed teaching activities offer benefits that extend beyond her particular school to impact the field of education more broadly.⁷ Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

⁷ Likewise, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.